

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**NOTICE OF PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
AND NOTICE OF PROPOSED CHANGES TO TITLE 8
OF THE CALIFORNIA CODE OF REGULATIONS**

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

PUBLIC MEETING: On **March 17, 2005**, at 10:00 a.m.
in the County Administration Center,
1600 Pacific Highway, Room 358, San Diego, California.

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

PUBLIC HEARING: On **March 17, 2005**, following the Public Meeting
in the County Administration Center,
1600 Pacific Highway, Room 358, San Diego, California.

At the Public Hearing, the Board will consider the public testimony on the proposed changes to occupational safety and health standards in Title 8 of the California Code of Regulations.

BUSINESS MEETING: On **March 17, 2005**, following the Public Hearing
in the County Administration Center,
1600 Pacific Highway, Room 358, San Diego, California.

At the Business Meeting, the Board will conduct its monthly business.

The meeting facilities and restrooms are accessible to the physically disabled. Requests for accommodations for the disabled (assistive listening device, sign language interpreters, etc.) should be made to the Board office no later than 10 working days prior to the day of the meeting. If Paratransit services are needed, please contact the Paratransit office nearest you.

**OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD**

STEVEN L. RANK, Chairman

NOTICE OF PROPOSED CHANGES TO TITLE 8
OF THE CALIFORNIA CODE OF REGULATIONS
BY THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, Construction Safety Orders and General Industry Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on **March 17, 2005**.

1. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
Chapter 4, Subchapter 4, Article 24
Section 1670
Fall Arrest Free Fall Distance

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Chapter 4, Subchapter 7, Article 25
Sections 3649 and 3651(a)
Low Profile Tractors

A description of the proposed changes are as follows:

1. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
Chapter 4, Subchapter 4, Article 24
Section 1670
Fall Arrest Free Fall Distance

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

This rulemaking action is being initiated at the request of the Division of Occupational Safety and Health (Division). The Division submitted a Form 9, Request for New, or Change in Existing Safety Order, dated March 23, 2004, recommending that the maximum free fall distance in Section 1670(b)(11)(B) of the Construction Safety Orders (CSO) for fall arrest systems be amended from 4 feet to 6 feet. CSO Section 1670(b)(11)(B) requires in part that personal fall arrest systems, when stopping a fall, be rigged such that an employee cannot free fall more than 4 feet nor contact any lower level. The Division noted that this 4-foot maximum personal fall arrest free fall distance is inconsistent with the Federal OSHA counterpart standard contained in 29 Code of Federal Regulations (CFR) 1926.502(d)(16)(iii), which permits a maximum free fall of 6 feet, and with other existing Title 8 safety orders. Fall arrest systems outlined in both Section 3648 of Article 24 of the General Industry Safety Orders, and Section 2940.7 of Article 36 in the Electrical Safety Orders, also permit a maximum free fall distance of 6 feet.

The existing 4-foot free fall distance is problematic in that there are situations, depending on where the lanyard can be tied in, whereby an employee must resort to crawling on the working surface in order to maintain this maximum free fall distance because the lanyard is not long enough to allow the employee to stand upright. The Division notes that the more important issues pertaining to a free fall are that the employee does not contact any lower level and that the maximum arresting force on an employee be limited to 1,800 pounds when using a harness. Both of these existing elements are maintained in this proposal.

Section 1670(b)

Existing Section 1670 outlines the specifications for personal fall arrest systems, personal fall restraint systems, and positioning devices required for employees whose work exposes them to falling in excess of 7 ½ feet from the perimeter of a structure, unprotected sides and ledges, leading edges, through shaftways and openings, sloped roof surfaces steeper than 7:12, or other sloped surfaces steeper than 40 degrees not otherwise adequately protected under the provisions of the Construction Safety Orders.

Subsection (b) specifies the requirements for personal fall arrest systems, and prohibits the use of body belts as part of a personal fall arrest system, except as permitted in subsections (c) and (d). Subparagraph (11)(B) of subsection (b) states that a personal fall arrest system, when stopping a fall, shall be rigged such that an employee can neither free fall more than 4 feet, nor contact any lower level, and where practicable, the anchor end of the lanyard shall be secured at a level not lower than the employee's waist. A revision is proposed to revise the 4 foot free fall distance to 6 feet, consistent with federal counterpart standards contained in 29 CFR 1926.502(d)(16)(iii), and with free fall distances specified elsewhere in Title 8. The proposed amendment will have the effect of enabling employees to have sufficient mobility in those situations where the anchor end of the lanyard cannot be secured at waist level so that they can

perform their work. Otherwise, employees have to crawl in order to maintain the 4-foot maximum free fall distance.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code because the proposed amendment will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, the standard does not constitute a "new program or higher level of service of an existing program within the meaning of section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a "program" within the meaning of section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of

providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed standard does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed standard does not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendments to this standard will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
 Chapter 4, Subchapter 7, Article 25
 Sections 3649 and 3651(a)
 Low Profile Tractors

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

This rulemaking action is the result of two separate memorandums to the Occupational Safety and Health Standards Board (Board) from the Division of Occupational Safety and Health (Division), and attached Request for New, Or Change In Existing Safety Orders. The memorandum dated April 21, 2003, requests amendment to the low profile tractor definition in General Industry Safety Order (GISO) section 3649, and the other dated May 1, 2003, pertains to GISO section 3651, agricultural and industrial tractors, specifically amendment to subsection (a) for clarity through the elimination of duplicative language.

The Division stated that a technical, clarifying revision to section 3649 is necessary to indicate to the employer that all of the low profile tractor characteristics specified in the existing standard must be present to be classified as a low profile agricultural tractor. Three of the determining characteristics spelled out in the existing section 3649, low profile tractor definitions, are based on national consensus standard language as specified in part by the American Society of Agricultural Engineers (ASAE) S390.3 JUN01 standard. In reading the ASAE industry-based standard, it is clear to both the Division and Board staff that a low profile tractor is defined by possessing more than one defining characteristic. The existing Title 8, section 3649 definition is not clear as to whether a tractor must possess all four characteristics specified in paragraphs A-D in order to be called a low profile tractor. The proposal would improve clarity by specifying that all four (emphasis added) characteristics must be present in order to confirm the identity of a tractor as being a low profile tractor.

The Division is also proposing amendments to section 3651(a) to reorganize the regulatory text to eliminate duplication in the exception statements by deleting exception No. 1 and combining it with the existing exception No. 2. Board staff and Division agree that this proposed amendment would result in exceptions to the required rollover protective structures (ROPS) use that are clearer and more concise.

Section 3649. Definitions.

This section contains various definitions of terminology used in the regulatory text of Article 25 as they pertain to industrial trucks, tractors, haulage vehicles and earthmoving equipment, specifically definitions for terms such as but not limited to: agricultural tractor, ASAE, high-lift truck, low profile tractor, etc.

A revision is proposed to the definition for Low Profile Tractor to make it clear that the tractor must possess all four determining characteristics in paragraphs A-D pertaining to clearance, front wheel spacing, etc.

The effect of the proposed amendment will clarify to the employer that for any tractor to be classified as a “low profile tractor,” it must possess all four existing design/functional characteristics specified in the definition.

Section 3651. Agricultural and Industrial Tractors.

This section contains standards pertaining to the use of ROPS on agricultural and industrial tractors and includes exceptions for low profile tractors when they are used in certain situations where the use of ROPS would be infeasible. Additionally, this section contains specifications for the design and installation of ROPS in accordance with specified national consensus standards, ROPS labeling and identification, design of the operator’s station, design of battery, fuel tanks, coolant systems, etc.

A revision is proposed for subsection (a) to delete (a)(1) and amend existing (a)(2) to include language from (a)(1) pertaining to orchards, vineyards and hop yards. Further editorial revisions are proposed to renumber the paragraphs in subsection (a) consistent with existing Title 8 format and to delete the word “which” in existing (a)(2) for replacement by the grammatically correct word “that.”

The effect of the proposed revision will be to eliminate duplicative language in the existing regulatory text contained in subsection (a)(1), thereby rendering subsection (a) clearer and more understandable to the employer with regard to when ROPS are not required on low profile tractors.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standards do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these standards do not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a "program" within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on

local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

These proposed standards do not require local agencies to carry out the governmental function of providing services to the public. Rather, the standards require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these proposed standards do not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

These proposed standards do not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendments to these standards will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

A copy of the proposed changes in STRIKEOUT/UNDERLINE format is available upon request made to the Occupational Safety and Health Standard Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721. Copies will also be available at the Public Hearing.

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified alternatives has been prepared and is available upon request from the Standards Board's Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than March 11, 2005. The official record of the rulemaking proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on March 17, 2005, will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274-5743 or e-mailed at oshsb@hq.dir.ca.gov. The Occupational Safety and Health Standards Board may thereafter adopt the above proposal substantially as set forth without further notice.

The Occupational Safety and Health Standards Board's rulemaking file on the proposed actions including all the information upon which the proposals are based are open to public inspection Monday through Friday, from 8:30 a.m. to 4:30 p.m. at the Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833.

The full text of proposed changes, including any changes or modifications that may be made as a result of the public hearing, shall be available from the Executive Officer 15 days prior to the date on which the Standards Board adopts the proposed changes.

Inquiries concerning either the proposed administrative action or the substance of the proposed changes may be directed to Keith Umemoto, Executive Officer, or Michael Manieri, Principal Safety Engineer, at (916) 274-5721.

You can access the Board's notice and other materials associated with this proposal on the Standards Board's homepage/website address which is <http://www.dir.ca.gov/oshsb>. Once the Final Statement of Reasons is prepared, it may be obtained by accessing the Board's website or by calling the telephone number listed above.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

STEVEN L. RANK, Chairman

TITLE 8

CONSTRUCTION SAFETY ORDERS

CHAPTER 4, SUBCHAPTER 4, ARTICLE 24

SECTION 1670

FALL ARREST FREE FALL DISTANCE

TITLE 8

GENERAL INDUSTRY SAFETY ORDERS

CHAPTER 4, SUBCHAPTER 7, ARTICLE 25,

SECTIONS 3649 and 3651(a)

LOW PROFILE TRACTORS

NOTICE OF ADOPTION OF REGULATIONS
INTO TITLE 8, CALIFORNIA CODE OF REGULATIONS
BY THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

After proceedings held in accordance with and pursuant to the authority vested in Sections 142, 142.3 and 142.4, of the Labor Code to implement, interpret, or make specific, the Occupational Safety and Health Standards Board, by a majority vote, adopted additions, revisions, or deletions to the California Code of Regulations as follows:

1. Title 8: Chapter 4, Subchapter 7, General Industry Safety Orders, Article 7, Section 3314, The Control of Hazardous Energy

Heard at the January 15, 2004, Public Hearing; adopted on October 21, 2004; filed with the Secretary of State on December 7, 2004; and became effective on January 6, 2005.

2. Title 8: Chapter 4, Subchapter 7, General Industry Safety Orders, Article 2, Sections 3210 and 3212, Fall Protection at Ladderway and Stairway Entrances and Openings.

Heard at the September 23, 2004, Public Hearing; adopted on October 21, 2004; filed with the Secretary of State on December 8, 2004; and became effective on January 7, 2005.

3. Title 8: Chapter 4, Subchapter 4, Construction Safety Orders, Article 13, Section 1602(a), Personal Flotation Devices.

Heard at the September 23, 2004, Public Hearing; adopted on October 21, 2004; filed with the Secretary of State on December 8, 2004; and became effective on January 7, 2005.

A copy of these standards are available upon request from the Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721.

If you have Internet access, visit the Occupational Safety and Health Standards Board by going to: **<http://www.dir.ca.gov/oshsb>** and follow the links to the Standards Board. This information is updated monthly. The Standards Board's e-mail address is: **oshsb@dir.ca.gov**.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Keith Umemoto, Executive Officer